

## **Attachment 1: Summary of the Proposed Regulation**

The proposed regulation includes the following components:

- Requires businesses that generate 4 cubic yards or more of trash per week to recycle solid waste that they generate by subscribing to a recycling service, source separating their material and self-hauling to a recycling facility, or having their material processed in a mixed waste processing facility that yields diversion results comparable to source separation.
- Requires each local jurisdiction, regardless of whether the jurisdiction has met its AB939 50% equivalent per capita disposal target, to implement a commercial recycling program by July 1, 2012, that provides education, outreach and monitoring of businesses subject to the Commercial Recycling Regulation. If a jurisdiction already has a commercial recycling program that targets businesses required to comply with the regulation, and if the program includes education, outreach, and monitoring elements, it would not be required to implement a new or expanded program.
- Establishes general criteria for education and outreach to provide information explaining the requirements of the Commercial Recycling Regulation as well as, the recycling opportunities available, within the jurisdiction. Jurisdictions have flexibility to conduct education and outreach that fits their existing programs and resources. For example, the jurisdiction may choose whether they or the hauler(s) conduct these activities. Jurisdictions are also encouraged to utilize existing programs to incorporate information about the new state requirement, such as an existing website, newsletter, etc., to maximize resources.
- Establishes general criteria for monitoring of businesses and includes assessing if businesses are subscribing to and participating in recycling services, and notifying businesses that are not in compliance with these regulations. This is necessary to ensure that businesses that are required by these regulations to recycle commercial waste are identified and monitored, and that they are notified if not in compliance. Jurisdictions have flexibility to implement monitoring that fits their existing programs and resources. For example, the jurisdiction may choose whether it and/or the hauler(s) conduct these activities. Jurisdictions are encouraged to utilize existing programs to inform businesses of the state requirement to recycle, such as letters that are sent to businesses, on-site visits, phone calls from the hauler's sales representative, etc., to maximize resources. Jurisdictions might also choose to phase in monitoring over time depending on how many businesses are in the jurisdiction.

- Identifies commercial recycling program options that may be used to implement the regulation including: implementing a mandatory commercial recycling policy or ordinance, requiring mandatory commercial recycling through the franchise contract or agreement, and/or requiring that all commercial recycling materials go through a mixed waste processing system that yields diversion results comparable to source separation.
- Allows jurisdictions the flexibility to implement a commercial program that meets their local needs and works with their existing infrastructure. For example, a jurisdiction's recycling program may include an enforcement component; the enforcement component may include all businesses subject to a jurisdiction's recycling program or a subset of these businesses; and, a jurisdiction's recycling program may apply to businesses beyond those as defined in this regulation.
- Protects existing franchise agreements, contracts, licenses, and the right of businesses to sell or donate recyclable materials.
- Makes CalRecycle responsible for evaluating and enforcing jurisdiction performance in implementing the mandatory commercial recycling program, and for measuring greenhouse gas emissions reductions associated with commercial recycling at the statewide level.
- Retains ARB's ultimate authority for oversight and implementation of the proposed regulation, including, if required, use of ARB's statutory enforcement procedures.

## **A. § 9XXX0 Purpose**

### **Subsection (a)**

The purpose of this Article is to implement the Mandatory Commercial Recycling Measure provisions of the Scoping Plan adopted by the State Air Resources Board pursuant to Assembly Bill 32, (Nunez, 2006) §38500, et seq., of the Health and Safety Code.

## **B. § 9XXX1 Definitions**

§ 9XXX1 is necessary as a number of technical and administrative terms appear in this Article that requires definition to ensure regulatory consistency and clarity.

### **Subsection 9XXX1(a)**

Because this proposed regulation will appear in the statutes governing ARB, for regulatory consistency and clarity Subsection (a) is necessary to explain that, except as specifically noted in the proposed regulation, the technical and administrative terms in this Article incorporate the definitions of those terms which appear in the Public Resources Code (PRC) sections pertaining to CalRecycle.

**Subsection 9XXX1(b)**

Subsection (b) is necessary to define the technical and administrative terms that appear in this Article that require definition.

**Subsection (b)(1)**

Subsection (b)(1) defines the term “Annual Report.” This subsection is necessary to clarify the type of report required and the method in which it is to be submitted.

**Subsection (b)(2)**

Subsection (b)(2) is necessary to clarify that the term “CalRecycle” used in this Article means the Department of Resources Recycling and Recovery.

**Subsection (b)(3)**

Subsection (b)(3) defines the term “Jurisdiction.” This subsection is necessary to clarify which types of governmental entities are subject to the requirements of §9XXX3 through §9XXX5.

**Subsection (b)(4)**

Subsection (b)(4) defines the term “Business.” This subsection is necessary to clarify which types of commercial or public entities are subject to the requirements of this Article, and to explicitly state that public entities are included, and were considered in the development of this regulation. Public entities include military installations. This also clarifies that the threshold for businesses and multifamily residential of sixteen or more is 4 cubic yards of commercial solid waste per week, not 4 cubic yards of solid waste and 4 cubic yards of recyclables. Requiring the threshold to only include solid waste should make it easier for a jurisdiction to determine the businesses that fall under the regulation.

**Subsection (b)(5)**

Subsection (b)(5) defines the term “Commercial solid waste.” This subsection is necessary to clarify the types of material that shall be recycled in order to meet the requirements of this Article. Also, commercial solid waste does not include solid waste from single family residences or multifamily units of sixteen or less.

**Subsection (b)(6)**

Subsection (b)(6) defines the terms “Diversion” or “divert.” This subsection is necessary to clarify the required end result of a jurisdiction’s implementation of its commercial recycling program, specifically to reduce the amount of solid waste being disposed of in landfills. Also, clarifies that materials sent to transformation facilities must meet the requirements of PRC §41783(a)(2) regarding front-end methods or programs to remove, to the maximum extent possible, recyclable materials from the waste stream prior to transformation.

This exclusion does not prohibit waste from being sent to transformation facilities and does not change the provision that allows jurisdictions to obtain up to 10 percent

transformation credit as part of their per-capita disposal calculations under PRC §41783. This exclusion also would not prohibit loads of commercial material from being sent to a transformation facility, as long as the existing requirement for front-end processing to remove recyclable materials before transformation is met. This requirement is met even if a small proportion of businesses have their waste taken directly to the transformation facility without processing, where it has been determined that those loads are of such a nature that they (1) contain a small amount of recyclables, and/or (2) would contaminate the recyclables in other loads.

**Subsection (b)(7)**

Subsection (b)(7) defines the term “Disposal.” This subsection is necessary to clarify the activity that a business shall minimize through diversion.

**Subsection (b)(8)**

Subsection (b)(8) defines the term “Franchise.” This subsection is necessary to clarify that the existing contractual and other legal obligations between a jurisdiction and a hauler to transport solid waste would not be modified or abrogated by this Article. For purposes of these regulations the definition for “Franchise” is limited to commercial solid waste.

**Subsection (b)(9)**

Subsection (b)(9) defines the term “Hauler.” This subsection is necessary to clarify the action required of businesses regarding movement of commercial solid waste. This action includes either self-haul or subscribing to a service that hauls.

**Subsection (b)(10)**

Subsection (b)(10) defines the term “Landfill.” This subsection is necessary to ensure regulatory clarity and consistency with CalRecycle regulations.

**Subsection (b)(11)**

Subsection (b)(11) defines the term “Mixed Waste Processing.” This subsection is necessary to clarify that the option for a business to subscribe to a recycling service that includes mixed waste processing means a service that processes solid waste that contains both recyclables and solid waste and yields diversion results comparable to source separation.

**Subsection (b)(12)**

Subsection (b)(12) defines the terms “Recycle” or “recycling.” This subsection is necessary to clarify the type of program a business shall undertake and a jurisdiction shall implement to satisfy the requirements of this Article; and to assure regulatory clarity and consistency with the definitions in CalRecycle regulations

**Subsection (b)(13)**

Subsection (b)(13) defines the term “Recycling services.” This subsection is necessary to clarify the type of service to which a business may subscribe, if available, in order to comply with the regulation.

**Subsection (b)(14)**

Subsection (b)(14) defines the term “Recycling facility.” This subsection is necessary to clarify the type of facility that a business may contract for their waste materials to be processed, or transport materials itself that would be considered as complying with the regulation.

**Subsection (b)(15)**

Subsection (b)(15) defines the terms “Recyclables” and “recyclable materials.” This subsection is necessary to clarify what materials are considered as being subject to or able to be counted toward compliance with the regulation.

**Subsection (b)(16)**

Subsection (b)(16) defines the terms “rural city” and “rural county.” The subsection is necessary to clarify which jurisdictions are considered rural.

**Subsection (b)(17)**

Subsection (b)(17) defines the terms “Self hauler” or “self hauling.” This subsection is necessary to add clarity to an option for a business to consider for meeting the requirement to recycle its commercial solid waste. One option is transporting its own waste to a recycling facility.

**Subsection (b)(18)**

Subsection (b)(18) defines the terms “Source separating” or “source separation.” This subsection is necessary to clarify the process required of the owner or operator of a business to recycle its commercial solid waste when choosing the option described in §9XXX2(a) to either self-haul or subscribe to a service that hauls the recyclable materials separately from the solid waste to divert them from disposal.

**Subsection (b)(19)**

Subsection (b)(19) defines the term “Solid waste.” This subsection is necessary to define the types of materials subject to requirements of this Article and to assure regulatory clarity and consistency with the definitions in CalRecycle regulations.

**C. § 9XXX2 Mandatory commercial recycling by businesses**

Section 9XXX2 specifies the requirements a business shall meet to recycle its commercial solid waste.

**Subsection (a)**

Section 9XXX2(a) specifies a business shall recycle its commercial solid waste by taking one of the materials management options described in §9XXX2(a)(1) or §9XXX2(a)(2). This is necessary to define the party responsible for recycling commercial solid waste.

**Subsection (a)(1)**

Subsection (a)(1) specifies methods that a business may take to meet the requirement of this Article to recycle the business' commercial solid waste: by source separating recyclable materials and self-hauling these separately from the solid waste to a recycling facility, or subscribing to a service that hauls these source-separated recyclable materials to a recycling facility. This is necessary to inform business owners, operators, and/or employees of actions they may take to meet the requirement that commercial solid waste generated as part of business operations is recycled.

**Subsection (a)(2)**

Subsection (a)(2) specifies a method that the owner, operator, and/or employee of a business may take to meet the requirement of this Article to recycle the business's commercial solid waste: by subscribing to an alternative type of recycling service that includes mixed waste processing that diverts recyclable materials from disposal and that yields diversion results comparable to source separation. This is necessary to inform business owners, operators, and/or employees of an action they may take to meet the requirement to recycle commercial solid waste generated as part of business operations.

**Subsection (a)(3)**

Subsection (a)(3) specifies that if an alternative service takes waste to a transformation facility, and as long as the existing requirement in PRC §41783 for front-end processing to remove recyclable materials to the maximum extent feasible is met, then utilization of that service will be in compliance with this section. Additionally in some cases, a relatively small number of businesses may also have waste taken directly to the transformation facility without front-end processing where it has been determined that those loads are of such a nature that they contain a small amount of recyclables or would contaminate the recyclables in other loads.

**Subsection (b)**

Subsection (b) specifies that each business is responsible for ensuring and demonstrating its compliance with the requirements of §9XXX2. This is necessary to inform businesses of their responsibilities to ensure and demonstrate compliance with the commercial recycling requirement. In addition, this allows a jurisdiction and CalRecycle to determine whether or not a business is in compliance with the commercial recycling requirements of this section.

**Subsection (c)**

Subsection (c) specifies that the authority of a jurisdiction is not limited by this section and that it may adopt, implement, or enforce a more stringent or comprehensive

recycling program and that businesses located in such a jurisdiction are required to comply with local requirements. This is necessary to inform affected parties that in regards to more stringent or comprehensive recycling programs, a local jurisdiction is not limited by the statewide requirements for a business to recycle its commercial solid waste and businesses within a jurisdiction shall, at minimum, comply with the more stringent requirements (either statewide or local). This allows jurisdictions a level of autonomy to adopt, implement, or enforce more stringent or comprehensive recycling programs more suited to local conditions.

**Subsection (d)**

Subsection (d) specifies that legal mechanisms and rights described in this Subsection shall not be modified or abrogated by §9XXX2. This is necessary to assure relevant parties that this subsection does not affect legal mechanisms and rights.

**Subsection (d)(1)**

Subsection (d)(1) specifies that a franchise granted or extended by a city, county, or other local government agency cannot be modified or abrogated by §9XXX2. This is necessary to assure franchisees that this section does not modify or abrogate a franchise agreement granted by local government. This offers protection to the franchisee from the threat of unforeseen and disruptive changes to an existing franchise agreement.

**Subsection (d)(2)**

Subsection (d)(2) specifies that a permit to collect solid waste previously granted or extended by a city, county, or other local government agency cannot be modified or abrogated by §9XXX2. This is necessary assure franchisees that this section does not modify or abrogate a permit to collect solid waste granted by local government. This offers protection to the franchisee from the threat of unforeseen and disruptive changes to an existing permit to collect solid waste.

**Subsection (d)(3)**

Subsection (d)(3) specifies that nothing in these regulations is intended to prevent or otherwise regulate the right of a business prior to discarding materials to sell or exchange its recyclable materials at fair market value, for reuse or recycling, or to donate its recyclable materials to another entity for reuse or recycling. This subsection is a codification of statutory and case law that protects a business from being required to sell or exchange its recyclable materials at less than fair market value, and allows a business to donate its recyclable materials to another entity for reuse or recycling prior to discarding them.

**D. Section 9XXX3 Implementation of commercial recycling program by jurisdictions**

Section 9XXX3 specifies the requirements a jurisdiction shall meet to implement a commercial recycling program.

**Subsection (a)**

Subsection (a) specifies that effective July 1, 2012, each jurisdiction shall implement a commercial recycling program that diverts commercial solid waste generated by businesses, as defined in §9XXX1(b)(4). This is necessary to define the party responsible and timeline for implementing a commercial recycling program.

**Subsection (b)**

Subsection (b) specifies that, in addition to the businesses defined in §9XXX1(b)(4), the businesses subject to commercial recycling may also include any other commercial entity that the jurisdiction identifies as being a source of recyclable materials. This section is necessary to allow jurisdictions the flexibility to include commercial entities that are sources of recyclable materials that otherwise do not meet the §9XXX1(b)(4) definition of business.

**Subsection (c)**

Subsection (c) specifies that a jurisdiction shall determine the specific material types included in its commercial recycling program and lists a non-exclusive list of types of materials that could be considered for inclusion. This is necessary to ensure that a jurisdiction has flexibility to target specific material types for inclusion in its commercial recycling program which, based on local conditions, may differ from other jurisdictions.

**Subsection (d)**

Subsection (d) specifies that if, prior July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets the requirements of this Article, the jurisdiction will not be required to implement a new or expanded program. This is necessary to protect jurisdictions that have already implemented suitable commercial recycling programs from being required to implement a new program. In the event a jurisdiction's existing recycling program does not include all businesses as defined in this regulation, or the monitoring, outreach and education requirements of this Article, the program will need to be revised to do so.

**Subsection (e)**

Subsection (e) makes it explicit that if, in order to satisfy the requirements of this Article, a jurisdiction has to implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of PRC §41800 et seq. In addition, this subsection specifies that the jurisdiction shall include the addition or expansion of a commercial recycling program in its electronic annual report. This is necessary to ensure CalRecycle is provided information annually on jurisdictions' implementation of their commercial recycling programs, but offers relief to jurisdictions by exempting them from the statutory requirement to revise Source Reduction and Recycling Elements when implementing a new, or expanding an existing, commercial recycling program.



**Subsection (f)**

Subsection (f) specifies that the recycling program adopted pursuant to subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses, to recycle; requiring a mandatory commercial recycling program, through a franchise agreement or contract; or requiring that commercial solid waste from businesses be sent to a mixed waste processing facility. This is necessary to inform jurisdictions of optional components that may be included in a recycling program.

**Subsection (g)**

Subsection (g) specifies that the commercial recycling program shall include education and outreach to businesses and that the jurisdiction shall determine the types of educational and outreach programs to ensure that the program targets the components of the jurisdiction's commercial waste stream. This is necessary to ensure affected businesses are adequately informed about a jurisdiction's commercial recycling program, their requirements to recycle, and the components of the waste stream that the jurisdiction has targeted. While specific elements of a jurisdiction's education and outreach program will be unique, the following are examples of what jurisdictions could do annually to inform and educate businesses about the state requirement and how the businesses can comply.

- 1) Electronic: Place information on the jurisdiction's website that informs businesses of the state requirement to recycle and explains how businesses can recycle in the jurisdiction, e.g., information placed on the website might include contact information for the franchise hauler for service information, locations to self-haul recyclables to, etc.
- 2) Print: Send out information to the affected businesses via a brochure, letter, or newsletter. At a minimum this information should be sent annually, but could be done more frequently.
- 3) Direct Contact: Present at business forums, such as the Chamber of Commerce, and/or provide technical assistance through waste assessments to explain the state requirement and how businesses can recycle in the jurisdiction. Provide a contact person that businesses can call to ask questions.

The following provides guidance to rural jurisdictions that may have unique circumstances due to small geographic size and/or low population density:

Rural jurisdictions could include in its annual letter to businesses for business license renewals information about the State requirement for businesses to recycle and how businesses can recycle in the rural jurisdiction.

The jurisdiction may choose whether the jurisdiction and/or hauler(s) conduct these activities. Jurisdictions are also encouraged to utilize existing programs to incorporate information about the new state requirement to maximize resources, such as utilizing an existing website, newsletter, etc.

### **Subsection (h)**

Subsection (h) specifies that the commercial recycling program shall include identification and monitoring of businesses, to assess if businesses are subscribing to and participating in recycling services. In addition, this subsection specifies that the jurisdiction shall, at a minimum, notify businesses that are not in compliance with these regulations. This is necessary to ensure that businesses required by these regulations to recycle commercial solid waste are identified and monitored, and that they are notified if not in compliance. While specific elements of a jurisdiction's monitoring program will be unique the following are examples of what jurisdictions could do annually to notify businesses that are out of compliance with the state requirement and how the businesses can comply. The jurisdiction may choose whether the jurisdiction and/or hauler(s) conduct these activities. Jurisdictions are encouraged to utilize existing programs to incorporate information about the new state requirement, such as letters that are sent to businesses, notifications sent electronically, on-site visits, phone calls from the hauler's sales representative, etc., to maximize resources. Jurisdictions might also choose to phase in monitoring over time depending on how many businesses are in the jurisdiction.

- 1) The service provider, e.g., jurisdiction, if it is a city run program, or the franchise hauler(s), would track businesses and report to the jurisdiction on those businesses that are not recycling.
- 2) For those businesses that are not complying, either the jurisdiction or the hauler would send a notice to the business to inform them of the state requirement and how the business can recycle in the jurisdiction.

An additional approach to monitoring that jurisdictions might choose is the following:

- 3) Either the hauler or the jurisdiction could follow-up in person or with a phone call with the businesses that are not in compliance with the state regulation. The purpose of this follow-up would be to assist the business with identifying how it can recycle in the local jurisdiction.

The following provides guidance regarding monitoring to rural jurisdictions that may have unique circumstances due to small geographic size and/or low population density:

1. For jurisdictions that have staff or a hauler that services commercial businesses, the staff and/or hauler could identify the businesses that aren't recycling and then the jurisdiction would send out a letter that explains the state requirement that businesses recycle and how the businesses can recycle in the jurisdiction.
2. For jurisdictions that do not have staff and/or a hauler to do (1) above and because it might be difficult for the jurisdiction to ascertain which businesses are not recycling, then an annual letter would suffice. The letter could be sent electronically or hard copy depending upon the rural jurisdiction's situation.

### **Subsection (i)**

Subsection (i) suggests a non-exclusive list of additional components that the recycling program may include. This is necessary to inform jurisdictions of different types of components that can contribute to an effective recycling program.

**Subsection (i)(1)**

Subsection (i)(1) specifies that an additional component of the recycling program may include, but is not required to include, enforcement. If an enforcement component is implemented, jurisdictions may include, a penalty or fine structure that, consistent with a jurisdiction's authority, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution. In addition, this subsection specifies that consistent with a jurisdiction's authority any fees or penalties generated by the enforcement program could, in the jurisdiction's discretion, be used to pay the costs of operation, outreach, education, and other associated program costs. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

**Subsection (i)(2)**

Subsection (i)(2) specifies that an additional component of the recycling program may include building design standards that specify space requirements for storage of recyclables or other purposes that may assist the compliance of businesses with the program. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

**Subsection (i)(3)**

Subsection (i)(3) specifies that an additional component of the recycling program may include exemptions deemed appropriate by the jurisdiction such as, but not limited to, zoning requirements, lack of storage space, lack of markets, non-generation of recyclable materials, or current implementation by a business of actions that result in recycling of a significant portion of its commercial waste. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

**Subsection (i)(4)**

Subsection (i)(4) specifies that an additional component of the recycling program may include certification requirements for self-haulers which may include, but are not limited to, requiring businesses to maintain written records demonstrating that all self-hauling activities have been completed in accordance with the standards imposed by the jurisdiction's commercial recycling program. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

**Subsection (j)**

Subsection (j) specifies that each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, monitoring, and, if applicable, enforcement efforts if the jurisdiction has implemented enforcement program, by providing updates in its electronic annual report. This is necessary to ensure CalRecycle is provided information annually on jurisdictions' recycling programs without requiring jurisdictions to revise Source Reduction and Recycling Elements when implementing a new, or expanding an existing, commercial recycling program.

**Subsection (k)**

Subsection (k) specifies that the recycling program implemented by the jurisdiction does not limit the right of any business prior to discarding the material to sell or exchange its recyclable materials at fair market value, for reuse or recycling, or to donate its recyclable materials to another entity for reuse or recycling. This subsection is necessary to protect a business from being required by a jurisdiction's recycling program to sell or exchange its recyclable materials at less than fair market value, or donating its recyclable materials to another entity for reuse or recycling.

**E. §9XXX4 CalRecycle Review**

Section 9XXX4 specifies the oversight responsibilities of CalRecycle in ensuring a jurisdiction implements a commercial recycling program in accordance with this Article.

**Subsection (a)**

Subsection (a) specifies it is CalRecycle's responsibility to review a jurisdiction's compliance with its requirements under this Article to implement a commercial recycling program. Also, this subsection specifies the commencement date and mechanism for this review. This is necessary to clarify the responsibilities of CalRecycle in reviewing a jurisdiction's compliance with its requirements under this Article to implement a commercial recycling program.

**Subsection (b)**

Subsection (b) specifies that CalRecycle may also review whether a jurisdiction is in compliance with its requirements under this Article to implement a commercial recycling program any time it receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement its program. This is necessary to provide CalRecycle with an additional method for determining whether a jurisdiction is in compliance with its requirements under this Article to implement a commercial recycling program, other than through review of a jurisdiction's Source Reduction and Recycling Element and Household Hazardous Waste Element. Also, this is necessary to clarify that CalRecycle can act any time it determines that a jurisdiction is not meeting its requirements under §9XXX3.

**Subsection (c)**

Subsection (c) specifies that during its review of a jurisdiction's compliance with its requirements under this Article to implement a commercial recycling program, CalRecycle is required to determine whether each jurisdiction has made a good faith effort to implement the program. This subsection clarifies the criteria a jurisdiction is required to meet in order for CalRecycle to determine whether a "good faith effort" has been made. This subsection defines "good faith effort" as "all reasonable and feasible efforts" by a jurisdiction to implement its selected commercial recycling program. This definition mirrors the "good faith effort" standard contained in PRC §41825(e). CalRecycle (formerly the Integrated Waste Management Board) has extensive experience in applying this standard in evaluating the programs contained in jurisdictions Source Reduction and Recycling Elements. This "good faith effort" standard takes into account the numerous considerations and factors contained in PRC

§41825(e) (1) through (5), as applicable to the jurisdiction. In addition, this subsection specifies a non-exclusive list of some specific factors pertaining to commercial recycling, that CalRecycle may include in its evaluation of a jurisdiction's "good faith effort." This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program and that its efforts are fairly evaluated.

Subsection (c) also specifies that a jurisdiction's failure to implement its commercial recycling program may be a sufficient basis for issuance of a compliance order, even if the jurisdiction has met its AB 939 50% per capita equivalent disposal target. This is necessary to ensure that in the event a jurisdiction fails to implement its commercial recycling program, CalRecycle can issue a compliance order for achieving compliance. This is necessary to ensure each jurisdiction is meeting the requirements of this Article to implement a commercial recycling program.

#### **Subsection (c)(1)**

Subsection (c)(1) specifies that in its evaluation of a jurisdiction's "good faith effort," CalRecycle may include, but is not limited to, considering the extent to which the businesses have subscribed to recycling services, including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are subscribing to service. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

#### **Subsection (c)(2)**

Subsection (c)(2) specifies that in its evaluation of a jurisdiction's "good faith effort," CalRecycle may include, but is not limited to, considering the recovery rate of the commercial waste from the material recovery facilities that are utilized by the 14CCR §18809.4. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

#### **Subsection (c)(3)**

Subsection (c)(3) specifies that in its evaluation of a jurisdiction's "good faith effort," CalRecycle may include, but is not limited to considering the extent to which the jurisdiction is conducting education and outreach to businesses in accordance with this Section. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

#### **Subsection (c)(4)**

Subsection (c)(4) specifies that in its evaluation of a jurisdiction's "good faith effort," CalRecycle may include, but is not limited to considering the extent to which the jurisdiction is monitoring businesses and notifying those businesses that are out of

compliance. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a “good faith effort” to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

**Subsection (c)(5)**

Subsection (c)(5) specifies that in its evaluation of a jurisdiction’s “good faith effort,” during its review, CalRecycle may include, but is not limited to considering the availability of markets for collected recyclables. This is necessary to clarify criteria CalRecycle may use in determining whether a jurisdiction is making a “good faith effort” to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

**Subsection (c)(6)**

Subsection (c)(6) specifies that in its evaluation of a jurisdiction’s “good faith effort,” during its review, CalRecycle may include, but is not limited to considering budgetary constraints of local jurisdictions. This is necessary to clarify criteria CalRecycle may use in determining whether a jurisdiction is making a “good faith effort” to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

**Subsection (c)(7)**

Subsection (c)(7) specifies that in its evaluation of a jurisdiction’s “good faith effort,” during its review, CalRecycle may, include but is not limited to, considering a rural jurisdiction’s small geographic size or low population density in determining whether a rural jurisdiction is making a “good faith effort” to implement a commercial recycling program. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a “good faith effort” to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

**Subsection (d)**

Subsection (d) specifies that if, after a public hearing on the matter, CalRecycle finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program, CalRecycle shall issue a compliance order with a specific schedule for achieving those requirements. This is necessary to ensure that a jurisdiction that is not complying with the requirements of this Article to implement a commercial recycling program is issued a compliance order with a specific schedule for achieving these requirements.

**Subsection (e)**

Subsection (e) specifies that the compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision.

Also, this subsection specifies that CalRecycle shall also set a date by which the jurisdiction shall meet the requirements of the compliance order. This is necessary to identify, for the jurisdiction, which aspects of its program are not being implemented or attained, and to set a date for the jurisdiction to comply with the requirements. This is necessary to ensure each jurisdiction is meeting the requirements of this Article to implement a commercial recycling program.

#### **Subsection (f)**

Subsection (f) specifies that CalRecycle shall hold a hearing to determine whether a jurisdiction has complied with the terms of the compliance order and if CalRecycle determines that the jurisdiction has failed to make a good faith effort to implement its commercial recycling program in accordance with this Article, CalRecycle may impose administrative civil penalties upon the jurisdiction of up to ten thousand dollars (\$10,000.00) per day until the jurisdiction implements the program. This is necessary to ensure a jurisdiction has the right to a public hearing on whether it has complied with the terms of a compliance order and CalRecycle determines that the jurisdiction has failed to make a good faith effort to implement its commercial recycling program in accordance with this Article, the jurisdiction is subject to administrative civil penalties until the program is implemented. This is necessary to ensure each jurisdiction is meeting the requirements of this Article to implement a commercial recycling program.

#### **F. §9XXX5 ARB Oversight**

Sections 9XXX5 is necessary to explain ARB's role and function of responsibility and authority for oversight in implementation and, if necessary, enforcing the proposed regulation. AB 32 contains provisions in California Health and Safety Code (H&S Code) §§ 38510 and 38530 that designate ARB as the state agency to monitor and regulate GHG emissions, and that require ARB to adopt regulations requiring reporting and verification of GHGs, the program for which ARB is to monitor and enforce (§ 38580). Although CalRecycle will implement the regulations and investigate potential violations thereof, ARB retains the oversight authority to enforce and subject violators to penalties for non-compliance as stated in H&S Code sections. Although the implementation and enforcement of the regulation will be directed by CalRecycle, ARB is required to retain oversight authority to enforce and impose penalties for non-compliance as stated in H&S Code sections. In the unlikely event that CalRecycle's enforcement efforts do not sufficiently achieve the goals of the program and supplemental ARB enforcement action is needed, then ARB may take the following steps as provided for in its existing statutes. A violation of the proposed requirements may result in civil and criminal penalties. The extent of the penalty would depend on the willfulness of the violation, the length of time of the noncompliance, the magnitude of the noncompliance, and other pertinent factors, consistent with the provisions outlined in H&S Code §§38580.